CF0000062412

(2)

Division Bench (rimin-l)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Cr.Appeal No.3331 of 1999

(Memorandum of Appeal under Section 374 of Cr.P.C.)

16030
10/12/99
Filed on ... Received
by Shri ... Advocate
Fls. I. P.

APPELLANTS IN JAIL : 1. Ishwar Prasad S/o Kuber Khadiya aged about 35 years, occupation labourers, resident of village Lehngapali, P.S. Pussore, District Raigarh.

2. Raghunath S/o Krishna Ram Gond aged about 39 years, occupation labourer, r/o Village Dungarmuda P.S. and district Raigarh.

Versus

RESPONDENT : The State of M.P. through District Magistrate Raigarh.

MEMORANDUM OF APPEAL UNDER SECTION 374 OF Cr.P.C.

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(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 3265/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 3265/99

DIVISION BENCH **HON'BLE SHRI FAKHRUDDIN & HON'BLE SHRI DHIRENDRA MISHRA, JJ**

APPELLANT : GAJANAND

VERSUS

RESPONDENT : STATE OF MADHYA PRADESH

WITH

CRIMINAL APPEAL NO. 3331/99

APPELLANT : ISHWAR PRASAD & ANOTHER

VERSUS

RESPONDENT : STATE OF MADHYA PRADESH

Present :

Smt. Kiran Jain, learned counsel for the appellant in Cr.A.No. 3265/99.
Smt. Indira Tripathi, learned counsel for the appellants in Cr.A.No. 3331/99.
Shri D.K. Gwalre, learned Dy. Govt. Advocate for the State/respondent.

P.T.O.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ORAL JUDGMENT
(24TH AUGUST 2006)

PER DHIRENDRA MISHRA, J

Both the abovementioned appeals preferred under Section 374(2) of the Code of Criminal Procedure are being disposed of by this common order as they arise out of the impugned judgment dated 11th October 1999 passed by Second Additional Sessions Judge, Raigarh (M.P.) in S.T.No. 134/98 whereby the learned Additional Sessions Judge after holding them guilty of causing death of Thandaram, father of accused/appellant Gajanand, convicted them under Section 302/34 of the Indian Penal code and sentenced to undergo imprisonment for life with a fine of Rs.2,000/- each, in default of which to further undergo R.I. for six months.

2. Case of the prosecution in brief is that accused Gajanand, son of deceased Thandaram, was addict to alcohol and narcotic drugs as a result of which his father turned him out of the house. Thereafter, he was residing in the house of accused Ishwar. On the date of incident i.e. 24.7.1998 when the festival of *Hareli* was being celebrated, accused Gajanand in association with accused Ishwar and Raghunath caused death of Thandaram by attacking with axe. Rangilal (PW-1) lodged the First Information Report (Ex.P/2) on 24.7.1998 at about 16.30 hours in the Police Station – Pusour, Distt-Raigarh mentioning therein that while he was sleeping in his house along with his family after taking lunch, his aunt Chotebai came to his house and shouted that Gajanand Uraon has killed Thandaram Uraon. After hearing this, he went to the house of Thandaram and saw that he was lying dead. Thandaram had sustained injuries over left side of his neck, left shoulder and one finger of his left hand was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

amputated and blood was oozing. He also stated that Thandaram Uraon had ousted his son accused Gajanand as he used to commit theft in his own house and harass him and on account of this animosity accused Gajanand has killed his father Thandaram with knife or any other sharp edged weapon. The incident was witnessed by Padman Uraon and Krishna Uraon. After registering the crime under Section 302 of the Indian Penal Code, the police proceeded for the scene of occurrence and after giving notice to the Panchas, inquest report of Ex.P/8 was prepared. Thereafter, dead body of Thandaram was sent for autopsy to Community Health Centre, Pusour vide Ex.P/13-A where Dr. H.S.Uraon conducted post postmortem over the dead body and submitted his report of Ex.P/13. Plain and bloodstained soil was taken into possession from the place of incident vide Ex.P/3. A knife was seized from Chotebai Uraon (PW-2) vide Ex.P/4. On the basis of memorandum of accused Gajanand (Ex.P/9), an axe was taken into possession under Ex.P/10. Bloodstained lungi of accused Gajanand was taken into possession vide Ex.P/11. The seized axe and lungi were sent for chemical examination to Community Health Centre, Pusour from where report of Ex.P/14 was received in which it was opined that the injuries present on the body of deceased may be caused by this weapon and that bloodlike stains are present over the lungi. Halka Patwari Ramprasad Patel (PW-12) prepared the site plan of Ex.P/15. A sealed packet containing bloodstained clothing of deceased Thandaram was taken into possession under Ex.P/18. The seized articles i.e. bloodstained and plain soil, lungi of accused Gajanand Uraon, wearing apparels of deceased Thandaram and weapon of offence axe were sent for chemical examination to Forensic Science Laboratory, Raipur vide Ex.P/23 from where report Ex.P/24 was received. After completing the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Raigarh who in turn committed the case to the Court of Sessions Judge, Raigarh and the same was received on transfer by the learned Additional Sessions Judge, Raigarh for trial. Charge under Section 302 of the IPC was framed against all the three accused persons who abjured their guilt.

3. The prosecution in order to establish the charges against the accused/appellants examined 16 witnesses in all. Thereafter, statements of the accused/appellants were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implication in the crime. They also examined one defence witness namely Santosh Gupta (DW-1) in their defence. The Court below after hearing learned Additional Public Prosecutor and counsel for the accused/appellants, convicted and sentenced them as mentioned above.

4. Homicidal death of deceased Thandaram is not in dispute. Even otherwise from the statement of Dr. H.S.Uraon (PW-11) who conducted postmortem over the dead body of Thandaram and submitted his report of Ex.P/13 in which he noticed various injuries described below and opined that the cause of death was shock and coma due to excessive bleeding from the major artillery and fracture of vertebra and the death was homicidal in nature, homicidal death of deceased Thandaram is established.

External Injuries:

1) Incised wound over right side of neck. Blood vessels and muscles were cut,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

fracture over 3rd and 4th vertebra was present.

2) Incised wound over the right shoulder 2 ½ x ½ x 2 " blakish in colour, blood vessels cut.

3) Incised wound below the chin 3 x 2 ½ x 3 ", blood vessels and trachea cut. There was compound fracture in the 3rd and 4th vertebra.

4) Incised wound in the left side of the neck 1 x 1 x 1 ½ ", blood vessels cut.

5) Incised wound over the left shoulder 2 x 1 x 3 ", joints of the shoulder severed, fracture was noticed below the clavicle bone.

6) Left thumb, middle, lady and index finger were cut.

All the injuries are said to have been caused within 24 hours of the death.

Internal Injuries :

Body was averaged statured. On opening of the skull congestion was found. Ear drum, ribs, lungs were congested and wind pipe and trachea were congested, 3rd and 4th cervical bone were cut, both lungs congested, heart was also congested, stomach, large intestine and small intestine were unaffected and inside the stomach liquid and gases were noticed. There was excreta in the large intestine. Liver, spleen and kidney were congested, bladder was empty and genital parts were unaffected.

Death was opined to be due to shock as a result of coma which might have been caused due to cutting of large blood vessels and excessive bleeding. The death is opined

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to have been caused within 12 to 24 hours of the postmortem.

5. Now the only question to be decided in this appeal is the involvement of the accused/appellants in crime in question.

6. Rangilal (PW-1) has lodged the FIR of Ex.P/2 in which he has stated that Thandaram was unhappy with the conduct of his son Gajanand as he used to commit petty thefts in his own house and quarrel with him because he was involved in gambling. Darashram (PW-9) as also Shantibai (PW-10), who are independent witnesses, have stated in their depositions that on the last *Harel*i festival when they were in their house, accused/appellant Gajanand came there in the afternoon and asked for axe to kill his father. PW-1 Rangilal has stated in his deposition that he was sleeping in his house as he was suffering from fever and when he came out of his house, he saw that Ishwar and Raghu were standing on the gate and on being asked, they told that they had come to take betel (*paan*). At that time his aunt Chotebai shouted that Thandaram has been murdered and further she informed that Gajanand, Ishwar and Raghu have murdered him. In the cross-examination when he was confronted with his report of merg intimation (Ex.P/1), FIR (Ex.P/2) and his diary statement of Ex.D/1 then he stated "he is not in a position to explain as to why the fact that Ishwar and Raghu were standing on the gate, on being asked they told that they had come to take betel, that they had committed the murder of Thandaram, is missing in his reports of Ex.P/1, P/2 and the statement of Ex.D/1 because he had already disclosed the above fact in his reports as also in his diary statement."

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

7. Chotebai (PW-2) has stated in his deposition that on the date of incident Gajanand, Raghu and Ishwar came to her house, she offered them refreshments and saw that Gajanand had concealed an iron weapon like knife under the cloth. She took that weapon from him and threw the same in her house and after locking the house she went to the shop for purchasing spices. When she was returning from the shop, the villagers were shouting that Gajanand has killed his father and thereafter, she went to the house of deceased Thandaram and saw that Thandaram had sustained injuries over his neck and arm from which blood was oozing. She has also stated that Shyamlal informed her that his brother Gajanad has killed his father and Raghu and Ishwar were also with Gajanand who were standing there at the time of incident. Shyamlal (PW-3) who is son of the deceased and eyewitness of the incident; has stated in his deposition that the incident occurred one year prior to the date of his examination on the day of *Hareli*, when he was sitting by the side of the road, at that time Gajanand came out of the house of Sitaram and thereafter Raghu and Ishwar also came and all the three went to the house of Sarpanch and after staying there for some time they proceeded towards the village. Thereafter, he (Shyamlal) went to his house where he saw that Gajanand was assaulting his father and he only witnessed the last assault being inflicted. He (Gajanand) was assaulting with axe. He could not see the first assault. Ishwar and Raghu were standing at the gate side by side. Thereafter, he raised an alarm that his father was being assaulted, run. His father sustained injuries over his hand, two fingers and one thumb. He has also stated that Gajanand used to consume liquor, engage himself in gambling and had also sold two bicycles and a

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

watch and on this count his father being annoyed had ousted him from the house. Thereafter, Gajanand was residing in the house of Ishwar.

8. If we closely scrutinize the evidence of aforesaid witnesses, the fact which emerges is that the deceased was annoyed with his son Gajanand as he was addict to alcohol, used to engage himself in gambling and commit theft in his house, as a result of which he was ousted from the house and started living in the house of Ishwar and therefore, accused Gajanand was nourishing animosity against his father Thandaram. It has also come on record that on the date of incident itself accused Gajanand went to the house of PW-9 and PW-10 just before the incident and asked for some weapon as he was determined to kill his father. The above fact is also corroborated by the statement of PW-2 Chotebai who has stated that Gajanand came to her house with a knife. However, the defence has not been able to elicit anything in the cross-examination of these witnesses which impeaches their credibility.

9. Thus, on the basis of above, so far as the allegations made against accused/appellant Gajanand are concerned, we are of the considered opinion that the Court below has not committed any illegality or infirmity in holding the accused Gajanand guilty of causing homicidal death of his father Thandaram.

10. However, from the statements of the above witnesses the only allegation leveled against accused/appellants Ishwar and Raghu is that they were standing side by side at the gate of house of Rangilal (PW-1) when accused Gajanand was assaulting his father Thandram. There is no allegation by Shyamlal (PW-3) in his statement that these two appellants in any way participated in the crime in question. Even there is no

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

allegation of exhortation against them. So far as the statement of Rangilal (PW-1) in which he has alleged that these accused persons were assaulting the deceased is concerned, we find that the allegations against the appellants Ishwar and Raghu in his statement is in fact an omission which amount to contradiction and therefore, the statement of PW-1 so far as it relates to appellants Ishwar and Raghu, the same cannot be believed.

11. Thus looking to the overall evidence available on record against the accused/appellants Ishwar and Raghu, we are of the considered opinion that the prosecution has utterly failed to adduce any evidence which implicates these appellants in the crime in question and the trial Court was not justified in convicting the accused/appellants Ishwar and Raghu along with accused/appellant Gajanad under Section 302 of the IPC with the aid of Section 34.

12. In the result, the criminal appeal No.3265/99 preferred by accused/appellant Gajanand being devoid of merit deserves to be dismissed and the same is accordingly dismissed. So far as the criminal appeal No. 3331/99 preferred by accused/appellants Ishwar and Raghu is concerned, since the prosecution has not been able to bring forth any evidence implicating these appellants, the same is allowed and the impugned judgment of conviction and order of sentence passed by the trial Court is set aside so far as it relates to accused/appellants Ishwar and Raghu. They are acquitted of all the charges. The fine amount, if any, deposited by them shall be returned. The bail bonds furnished by them stand discharged.

Sd/-
Fakhruddin
Judge

Sd/-
Dhirendra Mishra
Judge